

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE

GENERAL ADMINISTRATION

PREAMBLE

1. **Sections Affected**

Article 4	<u>Rulemaking Action</u>
R15-10-401	New Article
R15-10-402	New Section
R15-10-403	New Section
R15-10-404	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 42-105

Implementing statute: A.R.S. § 42-139.14
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Jerry Skinner, Tax Analyst

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The rules will implement the statutory provisions of A.R.S. § 42-139.14 with respect to reimbursement of fees and other costs related to an administrative proceeding. The rules are mandated by A.R.S. § 42-139.14.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**

Identification of the Rulemaking:

The rules are mandated by A.R.S. § 42-139.14.

Summary of Information in the Economic, Small Business, and Consumer Impact Statement:

It is expected that the benefits of the rules will be greater than the costs. The rules will benefit the public by establishing the procedure by which taxpayers may apply to the Department for reimbursement of fees and other costs related to an administrative proceeding. The Department will incur the costs associated with the rulemaking process. Taxpayers will incur some expense by the adoption of these rules.

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7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Jerry Skinner, Tax Analyst
Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007
Telephone: (602) 542-4672
Fax: (602) 542-4680

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has not scheduled any oral proceedings. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statements may be submitted to the person listed in question #7. Pursuant to A.R.S. § 41-1023(C), the Department will schedule oral proceedings if 5 or more people file written requests for oral proceedings within 30 days after this publication of this notice.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
None.

11. The full text of the rules follows:

TITLE 15. REVENUE

**CHAPTER 10. DEPARTMENT OF REVENUE
GENERAL ADMINISTRATION**

**ARTICLE 4. REIMBURSEMENT OF FEES AND OTHER
COSTS RELATED TO AN ADMINISTRATIVE
PROCEEDING**

Section

- R15-10-401 Application for Reimbursement of Fees of Fees and Other Costs Related to an Administrative Proceeding
R15-10-402 Documentation of Payment of Fees and Other Costs
R15-10-403 Filing an Application
R15-10-404 Decisions

**ARTICLE 4. REIMBURSEMENT OF FEES AND OTHER
COSTS RELATED TO AN ADMINISTRATIVE
PROCEEDING**

R15-10-401. Application for Reimbursement of Fees of Fees and Other Costs Related to an Administrative Proceeding

- A. To apply for reimbursement of reasonable fees and other costs, as provided in A.R.S. § 42-139.14, a taxpayer shall file a written application with the Department's problem resolution officer.
- B. An application shall include the following:
1. Taxpayer's name, address, and identification number;
 2. Identification of the tax type and the administrative proceeding for which reimbursement is sought;
 3. A detailed explanation of the reasons why the taxpayer alleges that the position of the Department in the administrative proceeding was not substantially justified;
 4. If multiple issues were presented in the administrative proceeding and the taxpayer did not prevail on all issues, a detailed explanation of the issue or set of issues on which the taxpayer prevailed, a detailed explanation of the issues or set of issues on which the taxpayer did not

prevail, and a detailed explanation as to why the issue or set of issues on which the taxpayer prevailed is the most significant issue or set of issues presented in the administrative proceeding;

5. A statement that the taxpayer has not unduly and unreasonably protracted the administrative proceeding for which reimbursement is sought;
 6. A statement that the reason the taxpayer prevailed was not due to an intervening change in the applicable law; and
 7. A detailed explanation of the nature and amount of each specific item for which reimbursement is sought.
- C. An application may also include any other matters that the taxpayer wishes the Department's problem resolution officer to consider in determining whether and in what amount reimbursement should be made.
- D. The taxpayer shall sign the application. It shall contain or be accompanied by a written verification under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.
- E. If a paid representative of the taxpayer prepares the application, the representative shall also sign the application. It shall contain or be accompanied by a written verification under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the representative's information and belief.
- F. Fees and other costs incurred in making application for reimbursement or regarding an appeal of a decision for reimbursement do not relate to an administrative proceeding in connection with an assessment, determination, collection, or refund of tax as required by A.R.S. § 42-139.14. Therefore, fees and other costs incurred with respect to an application or appeal under A.R.S. § 42-139.14 are not reimbursable.

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R15-10-402. Documentation of Payment of Fees and Other Costs

The taxpayer shall submit with the application documentation which shows payment of the fees and costs for which the taxpayer seeks reimbursement. The taxpayer shall submit a separate itemized statement for each firm or individual that provided services covered by the application. The itemized statement shall show the hours spent in connection with the administrative proceeding by each individual, a description of the specific services performed, and the rates used in computing each fee. Each statement shall reflect payment or the taxpayer shall attach proof of payment to the statement. Separate, itemized statements of any other costs incurred by the taxpayer, together with proof of payment, shall also accompany an application.

R15-10-403. Filing an Application

- A. A taxpayer shall file an application for reimbursement of fees and other costs only after the conclusion of administrative proceedings, but not later than 30 days after the conclusion of administrative proceedings.
- B. For purposes of this rule, the conclusion of administrative proceedings is determined as follows:
 - 1. For a decision of a hearing officer or administrative law judge, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision unless, within the 30-day period, 1 of the following occurs:

- a. The taxpayer appeals the decision, or any part of the decision, to the State Board of Tax Appeals;
 - b. The taxpayer or the Department petitions the Director to review the decision or any part of the decision;
 - c. The Director independently determines that the decision, or any part of the decision, requires review.
- 2. When a decision of a hearing officer or administrative law judge is subject to a review by the Director, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the Director's decision unless, within the 30-day period, the taxpayer appeals the decision, or any part of the decision to the State Board of Tax Appeals.
- 3. When a taxpayer appeals a decision, or any part of a decision, to the State Board of Tax Appeals, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision of the State Board of Tax Appeals.

R15-10-404. Decisions

- A. The Department's problem resolution officer shall issue a written decision on each application for reimbursement of fees and other costs. The problem resolution officer shall issue the decision within 30 days after receipt of the application and shall set forth the reasons for the decision.
- B. The problem resolution officer's decision is issued when mailed to the taxpayer's address furnished in the application.